

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182

**SERVICES FOR LEVEL 3.7 INPATIENT TREATMENT AND
LEVEL 3.2D DETOXIFICATION SERVICES**

PROPOSALS ARE DUE NO LATER THAN March 21, 2016 5:00 pm CDT

RFP #516

BUYER: Department of
Social Services

POC: Mark Close
Mark.close@state.sd.us

READ CAREFULLY

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

ADDRESS: _____ TYPE OR PRINT NAME: _____

CITY/STATE: _____ TELEPHONE NO: _____

ZIP (9 DIGIT): _____ FAX NO: _____

FEDERAL TAX ID#: _____ E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____ TELEPHONE NO: _____

FAX NO: _____ E-MAIL: _____

1.0 **GENERAL INFORMATION**

1.1 **PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The Department of Social Services, Division of Behavioral Health is soliciting proposals from qualified entities to develop the following new program(s):

Level 3.7 intensive inpatient services with the option to also include Level 3.2D clinically-managed residential detoxification if a need for such services exists within the community. This RFP is for 16 residential beds. The target population is individuals with substance use disorders who qualify for Level 3.7 or 3.2D services and and who may also present with challenging behaviors, co-occurring mental health disorders, and/or medical issues, and who may also be treatment resistant.

Offerors may submit proposals to provide the required services identified under the RFP.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

1.2 **ISSUING OFFICE AND RFP REFERENCE NUMBER**

The Department of Social Services, Division of Behavioral Health is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services. The reference number for the transaction is RFP #516. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

1.3 **LETTER OF INTENT**

All interested offerors are requested to submit a non-binding **Letter of Intent** to respond to this RFP. While preferred, a Letter of Intent is not mandatory to submit a proposal.

The letter of intent must be received by email in the Department of Social Services by no later than January 25, 2016 and must be addressed to Mark.Close@state.sd.us. Place the following, exactly as written, in the subject line of your email: **Letter of Intent for RFP #516**. Be sure to reference the RFP number in any attached letter or document.

1.4 **SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)**

RFP Publication	<u>January 11, 2016</u>
Letter of Intent to Respond Due	<u>January 25, 2016</u>
Deadline for Submission of Written Inquiries	<u>February 1, 2016</u>
Responses to Offeror Questions	<u>February 8, 2016</u>
Proposal Submission	<u>March 21, 2016 5:00 pm CDT</u>
Oral Presentations/discussions (if required)	<u>To be determined, if needed</u>
Deadline for Completion of Site Visits (if required)	<u>To be determined, if needed</u>
Proposal Revisions (if required)	<u>To be determined, if needed</u>
Anticipated Award Decision/Contract Negotiation	<u>April 11, 2016</u>

1.5 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received by the Department of social Services, division of Behavioral Health by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

An original, 5 identical copies, and one (1) digital copy loaded on a USB flash drive of the proposal shall be submitted.

All proposals must be signed in ink by an officer of the responder legally authorized to bind the responder to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container. **Proposals must be addressed and labeled as follows:**

**Request For Proposal #516 Proposal Due March 21, 2016
South Dakota Department of Social Services
Attention: Mark Close
700 Governors Drive
Pierre SD 57501-2291**

No punctuation is used in the address. The above address as displayed should be the only information in the address field.

No proposal may be accepted from, or any contract or purchase order awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

1.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

1.7 NON-DISCRIMINATION STATEMENT

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

1.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

1.9 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after February 1, 2016. Email inquiries must be sent to *Mark.close@state.sd.us* with the following wording, exactly as written, in the subject line: **RFP #516 Questions.**

The Department of Social Services will respond to offerors inquiries by posting the offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than February 8, 2016. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

1.10 PROPRIETARY INFORMATION

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

1.11 LENGTH OF CONTRACT

It is anticipated that this RFP may result in the selection of one provider who will enter into a provider agreement with the Department of Social Services. The provider agreement for the provision of Level 3.7 intensive inpatient and Level 3.2D detoxification services resulting from this RFP will be negotiated with the successful offerors based on an approved cost proposal on an annual basis.

The purchase of service contract is anticipated to begin in April 2016 and end on May 31, 2016. The continuation of the contract in future years will be dependent on the Offeror's performance in implementing the services as outlined.

1.12 GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

1.13 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

2.0 STANDARD AGREEMENT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions as seen in Attachment A.

3.0 SCOPE OF WORK

The residential program will provide Level 3.7 intensive inpatient services and if needed, Level 3.2D clinically-managed residential detoxification services for up to 16 adult individuals at a time. The target population is individuals with substance use disorders who qualify for Level 3.7 or 3.2D services and who may also present with challenging behaviors, co-occurring mental health disorders, and/or medical issues, and who may also be treatment resistant.

3.1 ELIGIBILITY CRITERIA

Referrals to this program shall be:

- At least 18 years old,
- Assessed to need Level 3.7 substance use disorder intensive inpatient treatment by an Addiction Counselor, or
- Assessed to need Level 3.2D detoxification substance use disorder services by an Addiction Counselor

It is anticipated that the majority of patients served by this program will have challenging behaviors, co-occurring mental health disorders, and/or medical issues. It is also anticipated that patients served will include treatment resistant clients. The offeror will be expected to prioritize referrals of patients with challenging behaviors, co-occurring mental health disorders, and/or medical issues, as well as patients who are treatment resistant.

3.2 SERVICES

For the purposes of this RFP, each of the program design elements must be included in the submission. The Department of Social Services expects that some elements may be in the preliminary stages of development at the time of RFP application/proposal. During the planning phase, offerors will build upon and strengthen compliance with the mandatory program design elements. Offeror may receive technical assistance prior to program implementation. The offeror must document in written policy/procedure or plan how they plan to accomplish all areas set forth in all sections.

3.2.1 The proposal must outline how the provider will meet accreditation requirements in ARSD § 46:05:01 to 46:05:12;

3.2.2 The proposal must outline how the offeror will provide Level 3.7 Medically-Monitored Intensive Inpatient services pursuant to ARSD § 46:05:19 and all sections that this rule includes;

3.2.3 If applicable, the proposal must outline how the offeror will provide Level 3.2D Clinically-Managed Residential Detoxification services pursuant to chapter § 46:05:18 and all sections included in this rule;

3.2.4 The proposal must outline how the offeror will manage medical conditions, such as diabetes, and how the program will assist the target population with co-occurring mental health disorders and/or medical issues. Services must be designed to incorporate identified needs from all life domains and be responsive to cultural differences and special needs;

3.2.5 The proposal must outline how the offeror will implement measures to ensure client safety and security for treatment resistant clients, which could include utilizing a secure facility;

3.2.6 The proposal must outline how the offeror will provide services to residents with challenging behaviors, which may include utilizing additional staff and/or providing specific training and education to staff;

3.2.7 The proposal must outline how the offeror will provide an assessment pursuant to § 46:05:09:08;

3.2.8 The proposal must outline how the offeror will provide housing and dietary services pursuant to chapters § 46:05:11, 46:05:12, and article § 44:78;

3.2.9 The proposal must outline how the offeror will provide treatment planning pursuant to § 46:05:09:09;

3.2.10 The proposal must outline how the offeror will document continued service criteria pursuant to § 46:05:19:08 and § 46:05:18:12;

3.2.11 The proposal must outline how the offeror will provide individual and group counseling including progress note documentation pursuant to § 46:05:09:10, § 46:05:19:10, and § 46:05:18:10;

3.2.12 The proposal must outline how the offeror will submit all outcome measures, including timeframes, as required by the Division of Behavioral Health.

4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

- 4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 The proposal must include the names of individuals that will be working in the treatment program. If the offeror does not have the needed staff employed to operate the programs, the offeror must submit a time frame for hiring these staff.
- 4.3 The proposal must include copies of the credentials of the aforementioned individuals.
- 4.4 The proposal must include copies of any current accreditation certificates. Proposals from entities not currently accredited by the State must submit a projected timeline regarding how the program would become accredited.
- 4.5 The proposal must include letters of support from individual agencies or public entities that have worked with the offeror on local projects and can attest to the offeror commitment to quality care and to the community in which they are located.
- 4.6 The proposal must detail who the offeror will need to partner with to operate the above programs and letters of agreement from these entities in the partnership.
- 4.7 The proposal will document the number of years the offeror has been operating services in the community where they are located.
- 4.8 The proposal must describe their organizational structure and their 501c status, if applicable.
- 4.9 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific

procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

- 4.10 The offeror may be required to submit a copy of their most recent independently audited financial statements.
- 4.11 Provide the following information related to at least three previous and current service/contracts performed by the offeror's organization which are similar to the requirements of this RFP. Provide this information for any service/contract that has been terminated, expired or not renewed in the past three years:
- a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;
 - b. Dates of the service/contract; and
 - c. A brief, written description of the specific prior services performed and requirements thereof.
- 4.12 The Proposal for the Level 3.7 residential inpatient and Level 3.2D detoxification treatment program must submit information that demonstrates their availability and familiarity with the locale in which the project (s) are to be implemented.
- 4.13 The offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.14 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

5.0 PROPOSAL RESPONSE FORMAT

- 5.1 An original and 5 copies shall be submitted.
- 5.1.1 In addition, the offeror must submit one (1) copy of their entire proposal, including all attachments and cost proposal, in PDF electronic format loaded on a USB flash drive. Offerors may not send the electronically formatted copy of their proposal via email.
 - 5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.
- 5.2 All proposals must be organized and tabbed with labels for the following headings:
- 5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.
 - 5.2.2 **Executive Summary.** The one or two page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
 - 5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
 - 5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.

5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.

5.2.3.3 A clear description of any options or alternatives proposed.

5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

The cost proposal must be submitted in a separate sealed envelope labeled "Cost Proposal."

See section 7.0 for more information related to the cost proposal.

6.0 PROPOSAL EVALUATION AND AWARD PROCESS

6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:

6.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements. The ability to collect specific data and report outcome measures;

6.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project. The offeror's ability to provide the services listed in 3.0 Scope of Work;

6.1.3 Proposed project management techniques. The expertise of offeror's personnel. The offeror's expertise in the area of substance disorder treatment for these levels of care;

6.1.4 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration. The offeror's status of accreditation and fiscal reviews;

6.1.5 Cost proposal (Attachment C);

6.1.6 Ability and proven history in handling special project constraints;

6.1.7 Availability to the project locale;

6.1.8 Familiarity with the project locale; and

6.2 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.

6.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

6.5 **Award:** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.

6.5.1 If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.

6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

7.0 **COST PROPOSAL**

7.1 Each offeror must submit a budget proposal on Attachment C identifying projected costs for operation of the proposed program for a one year period. The cost proposal must be provided in the exact format included on the attached cost report and completed according to the attached cost report instructions.

7.2 The Program's actual final rate of reimbursement for the first year of operation will be established retroactively based upon the program's actual allowable costs determined by utilizing the Department's reimbursement guidelines. The maximum amount of final reimbursement per day for the first year of operation will not exceed the offeror's rate per day identified in the offeror cost proposal.

7.3 Actual allowable costs incurred for the first year of operation will be compared to total payments received through the interim daily per diem rate to determine the amount of the retroactive adjustment.

7.4 For each succeeding state fiscal year, the Department will utilize its reimbursement guidelines to establish a daily per diem rate adjusted by inflation policy as appropriated by the legislature.

Attachment A

STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF BEHAVIORAL HEALTH

Purchase of Services Agreement
Between

State of South Dakota
Department of Social Services
DIVISION OF BEHAVIORAL HEALTH
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Provider

Referred to as State

The State hereby enters into a vendor-type contractual agreement for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. PROVIDER'S South Dakota Vendor Number is _____.
2. PERIOD OF PERFORMANCE:
 - A. This agreement shall be effective as of _____ and shall end on _____, unless sooner terminated pursuant to the terms hereof.
 - B. Agreement is the result of request for proposal process, RFP # _____
3. PROVISIONS (add an attachment if needed) :
 - A. The Purpose of this agreement is to:
 - 1.
 2. Does this agreement involve Protected Health Information (PHI)? YES (X) NO ()
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the agreement (refer to Attachment B) .
 - B. The Provider agrees to perform the following services:
 - C. The TOTAL AMOUNT of this agreement will not exceed \$ _____.
Payment will be in accordance with SDCL 5-26.

4. BILLING:

Provider agrees to prepare and submit a bill for services within 30 days following the end of the month in which services were provided. If the provider cannot submit a bill within the 30-day timeframe, a written request for an extension of time must be provided to the State. If a bill has not been received by the State, the State reserves the right to refuse payment.

An exception to this is when a provider is waiting for program/funding eligibility determination and billing cannot be made within 30 days. Valid adjustments and/or voiding of claims can continue to occur past the 30-day timeframe.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. **ASSURANCE REQUIREMENTS:**

The Provider agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive orders 12549 and 12689), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009 as applicable.

8. **RETENTION AND INSPECTION OF RECORDS:**

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Provider.

9. **WORK PRODUCT:**

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Provider in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Provider without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Provider agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

10. COST REPORTING REQUIREMENTS:

☐ The provider agrees to submit a cost report in the format required by the State, and is due four months following the end of the provider's fiscal year.

or

☐ No reporting is required.

11. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. On termination of this agreement all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

12. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. SUPERCESSION:

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

16. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this agreement, which shall remain in full force and effect.

17. IT STANDARDS:

Provider warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class

mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. **SUBCONTRACTORS:**

Provider may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Provider is required to assist in this process as needed.

20. **HOLD HARMLESS:**

The Provider agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Provider to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

21. **INSURANCE:**

Before beginning work under this Agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Provider, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Provider agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Provider shall furnish copies of insurance policies if requested by the State.

A. **Commercial General Liability Insurance:**

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. **Business Automobile Liability Insurance:**

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. **Workers' Compensation Insurance:**

Provider shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. **Professional Liability Insurance:**

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

22. **CONFLICT OF INTEREST**

Provider agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Any potential conflict of interest must be disclosed in writing.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement, either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

24. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Provider shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit or influence of the State's information; (v) becomes known to Provider without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Provider acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this agreement require additional security requirements or clearance, the Provider will be required to undergo investigation.

☐ *For all attachments: make sure each attachment is appropriately labeled (i.e.; Attachment I, II, III... as a header and a Page Number as a footer on every page. Duplex printing is desired.)*

25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Provider Signature	_____ Date
_____ State- DSS Division Director Tiffany Wolfgang	_____ Date
_____ State - DSS Deputy Secretary Brenda Tidball-Zeltinger	_____ Date
_____	_____ Date

State Agency Coding:

CFDA#	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____
	_____	_____	_____	_____

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person Patty Hanson
Phone 605 773-3586

Provider Program Contact Person _____
Phone _____
Provider Program Email Address _____

Provider Fiscal Contact Person _____
Phone _____
Provider Fiscal Email Address _____

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES**

Attachment B

Business Associate Agreement

1. Definitions

General definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the consultant or entity contracting with the State of South Dakota as set forth more fully in the Agreement this Business Associate Agreement is attached.
- (b) CFR. “CFR” shall mean the Code of Federal Regulations.
- (c) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Social Services.
- (d) Designated Record Set. “Designated Record Set” shall have the meaning given to such term in 45 CFR 164.501.
- (e) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware within five (5) business days of receiving knowledge of such use, disclosure, breach, or security incident;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate

agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

- (e) Make available protected health information in a designated record set to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524. Business associate shall cooperate with covered entity to fulfill all requests by individuals for access to the individual's protected health information that are approved by covered entity. If business associate receives a request from an individual for access to protected health information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining the scope of protected health information and Designated Record Set with respect to each request by an individual for access to protected health information;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. Within ten (10) business days following any such amendment or other measure, business associate shall provide written notice to covered entity confirming that business associate has made such amendments or other measures and containing any such information as may be necessary for covered entity to provide adequate notice to the individual in accordance with 45 CFR 164.526. Should business associate receive requests to amend protected health information from an individual, Business associate shall cooperate with covered entity to fulfill all requests by individuals for such amendments to the individual's protected health information that are approved by covered entity. If business associate receives a request from an individual to amend protected health information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining whether to amend any protected health information with respect to each request by an individual for access to protected health information;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entities necessary to satisfy covered entity's obligations under 45 CFR 164.528. Business associate shall cooperate with covered entity to fulfill all requests by individuals for access to an accounting of disclosures that are approved by covered entity. If business associate receives a request from an individual for an accounting of disclosures, business associate shall immediately forward such request to covered entity. Covered entity shall be solely responsible for determining whether to release any account of disclosures;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the covered entity and / or the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

- (a) Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule if done by the covered entity. All other uses or disclosure by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- (b) The business associate is authorized to use protected health information if the business associate de-identifies the information in accordance with 45 CFR 164.514(a)-(c). In order to de-identify any information, Business Associate must remove all information identifying the individual including, but not limited to, the following: names, geographic subdivisions smaller than a state, all dates related to an individual, all ages over the age of 89 (except such ages may be aggregated into a single category of age 90 or older, telephone numbers, fax

numbers, electronic mail (email) addresses, medical record numbers, account numbers, certificate/ license numbers, vehicle identifiers and serial numbers (including license plate numbers, device identifiers and serial numbers, web universal resource locators (URLs), internet protocol (IP) address number, biometric identifiers (including finger and voice prints), full face photographic images (and any comparable images), any other unique identifying number, and any other characteristic or code.

- (c) Business associate may use or disclose protected health information as required by law.
- (d) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- (e) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity except for the specific uses and disclosures set forth in (f) and (g).
- (f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law.
- (g) Business associate may provide data aggregation services relating to the health care operations of the covered entity.

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.
- (b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.
- (c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

5. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement.
- (c) Obligations of Business Associate Upon Termination.
 - 1. Except as provided in paragraph (2) of this section, upon termination of this agreement for any reason, business associate shall return or destroy all protected health information received from, or created or received by business associate on behalf of covered entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that business associate determines that returning or destroying the protected health information is infeasible, business associate shall provide to covered entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, business associate shall extend the protections of this agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as business associate maintains such protected health information.

- (d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

6. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

Attachment C

STATE OF SOUTH DAKOTA
Residential Inpatient
REQUEST FOR PROPOSAL
FUNDING REQUEST

Funding Period:	
Funding Subarea(s)	Total Cost
Personnel Costs:	
Administrative	
Professional/Program Staff	
Support Staff	
Benefits	
Other: (Describe)	
Consultant Costs:	
Training (Including staff hours to attend)	
Professional Fees and Contract Services	
Other: (Describe)	
Operating Costs:	
Occupancy (Rent/Lease)	
Utilities	
Equipment and Supplies	
Printing/Publishing/Postage	
Telephone/Cell Phones/ Internet	
Office Supplies	
Insurances	
Local Staff Travel	
Other Costs: (Describe)	
Other: Describe	
TOTAL FUNDING REQUEST	